

EXHIBIT E

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SUPERIOR COURT OF CA.
COUNTY OF SANTA CLARA
BY DEPUTY

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5 Attorneys for Defendant
SILICON VALLEY ANIMAL CONTROL AUTHORITY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

10
11 LEE JACKSON and KENNETH JACKSON,) Case No.: 107CV079050
12 Plaintiffs,) DEFENDANT SILICON VALLEY
13 v.) ANIMAL CONTROL
14 SILICON VALLEY ANIMAL CONTROL) AUTHORITY'S UNVERIFIED
15 AUTHORITY, CITY OF SANTA CLARA, CITY) UNVERIFIED FIRST AMENDED
16 OF CAMPBELL, HUMANE SOCIETY SILICON) COMPLAINT
17 VALLEY DOES 1 TO 20,)
18 Defendants.)
19 _____

BY FAX

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Defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY, in answer to the allegations of the unverified first amended complaint on file herein, denies each and every allegation of said first amended complaint, and in this connection defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY denies that plaintiffs LEE JACKSON and KENNETH JACKSON have been injured or damaged in any of the sums mentioned in the first amended complaint or in any other amount by reason of any act or omission of this answering defendant.

FIRST AFFIRMATIVE DEFENSE

AS AND FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

That plaintiffs assumed the risk of any injuries and/or damages resulting from the matters set forth in said complaint, and that said assumption of risk by plaintiffs was a cause of the injuries and/or damages alleged by plaintiffs, if any there were.

SECOND AFFIRMATIVE DEFENSE

AS AND FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

That plaintiffs were themselves negligent and careless in and about the matters and events set forth in the complaint, and that said negligence contributed to their alleged injuries and/or damages. A verdict of the jury in favor of plaintiffs, if any, which may be rendered in this case must therefore be reduced by the percentage that plaintiffs' negligence contributed to the accident and injuries complained of, if any there were.

THIRD AFFIRMATIVE DEFENSE

AS AND FOR A THIRD, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

That the first amended complaint does not state facts sufficient to constitute a cause of action against this answering defendant.

FOURTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiffs' causes of action are barred by reason of the provisions of California Code of Civil Procedure sections 335.1, 337, 337.1, 338, 339, 340, and 343.

FIFTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiffs failed to mitigate their damages.

SIXTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiffs were guilty of willful misconduct and wanton and reckless behavior in and about the matters and events set forth in said complaint; and that said willful misconduct and wanton and reckless behavior contributed to the injuries and damages alleged, if any there were.

SEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
ALLEGES:

Prior to the time when defendant was alleged to have committed the acts complained of, plaintiffs invited, gave permission to, and consented to the acts alleged in the complaint. Each of the acts alleged in the complaint, which acts are expressly denied, was done within the scope of this consent and permission.

EIGHTH AFFIRMATIVE DEFENSE

6 AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
7 ALLEGES:

8 Any and all acts or omissions of this defendant, its agents and employees, which allegedly caused
9 the injury at the time and place set forth were the result of an exercise of discretion vested in them. This
10 defendant is thus immune from liability.

NINTH AFFIRMATIVE DEFENSE

12 AS AND FOR A NINTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

13 That plaintiffs failed to set forth the facts sufficient to state a cause of action due to a failure to
14 comply with claims requirements of the California Government Code §§ 900 et. seq.

TENTH AFFIRMATIVE DEFENSE

16 AS AND FOR AN TENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
17 ALLEGES:

18 The acts of this answering defendant were lawful and proper and in all respects were reasonable
19 and legal.

ELEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A ELEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
ALLEGES:

23 This answering defendant acted in good faith and with a reasonable belief that the actions were
24 lawful and further did not directly or indirectly perform any acts whatsoever which would constitute a
25 breach of any duty owed to plaintiffs.

TWELFTH AFFIRMATIVE DEFENSE

27 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
28 ALLEGES:

This answering defendant is immune from liability pursuant to the provisions of §§ 815, 815.2, 818, 820.2, 820.4, 820.6, 820.8, 820.9, 821.6, 844.6, and 845.6 of the Government Code of the State of California.

THIRTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

That the facts alleged in the first amended complaint do not involve any custom, practice, procedure or regulation of defendant, which gives rise to a violation of a constitutional right pursuant to *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978).

FOURTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Any and all acts and omissions of this defendant, which allegedly caused the injuries of which plaintiffs complains, which acts and injuries defendant expressly denies, were performed beyond the scope of an employment, agency or other relationship between this defendant and any other person.

FIFTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Any and all mandatory duties imposed upon defendant, its agents and employees, the failure of which allegedly created the condition complained of, were exercised with reasonable diligence and therefore defendant is not liable pursuant to Government Code § 815.6.

SIXTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

The allegations of the first amended complaint are barred by the equitable doctrines of laches, waiver, estoppel and unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT

ALLEGES:

Each of the other parties was negligent or legally responsible or otherwise at fault for the damages alleged in the plaintiff's complaint. This answering defendant, therefore, requests that, in the event of a finding of any liability in favor of plaintiffs, or settlement or judgment against this answering defendant, an apportionment of fault be made among all parties as permitted by *Li v. Yellow Cab Company* and *American Motorcycle Association v. Superior Court* by the court or jury. This answering defendant further requests a judgment and declaration of partial indemnification and contribution against all other parties or persons in accordance with the apportionment of fault.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiffs' first amended complaint, and each cause of action therein, is barred by the doctrines of collateral estoppel and res judicata.

NINETEENTH AFFIRMATIVE DEFENSE

AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiffs lack standing to bring this action.

TWENTIETH AFFIRMATIVE DEFENSE

AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiffs have failed to set out their claims with sufficient particularity to permit this answering defendant to raise all appropriate defenses. This answering defendant accordingly reserves the right to add additional defenses as the factual bases for plaintiffs' claims become known.

JURY DEMAND

Defendants hereby demand a jury trial in this action.

WHEREFORE, defendant prays that plaintiffs take nothing by way of the complaint on file

1 herein and that defendant have judgment for their costs, attorneys' fees and for such other and further
2 relief as the court deems proper.

3

4 Dated: October 24, 2007.

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LOW, BALL & LYNCH

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7 By 

MARK F. HAZELWOOD
DIRK D. LARSEN
Attorneys for Defendant
SILICON VALLEY ANIMAL CONTROL
AUTHORITY

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1 Action: Jackson v. Silicon Valley Animal Control Authority, et al.
 2 Santa Clara County Superior Court Case No.: 107CV079050

3 **PROOF OF SERVICE**

4 I am over the age of eighteen (18) years and not a party to the within action. I am employed at
 5 Low, Ball & Lynch, 505 Montgomery Street, 7th Floor, San Francisco, California 94111.

6 On the date indicated below, I served the following document(s) enclosed in a sealed envelope on
 7 the listed addresses:

8 **DOCUMENT(S): DEFENDANT SILICON VALLEY ANIMAL CONTROL AUTHORITY'S**
 9 **UNVERIFIED ANSWER TO PLAINTIFFS' UNVERIFIED FIRST**
AMENDED COMPLAINT

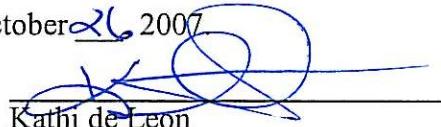
10 **ADDRESSES:** SEE ATTACHED SERVICE LIST

- 11 [X] **(BY MAIL)** I placed a true copy, enclosed in a sealed, postage paid envelope, and deposited
 12 same for collection and mailing at San Francisco, California, following ordinary business
 practices, addressed as set forth below.
- 13 [] **(BY PERSONAL SERVICE)** I caused each such envelope to be delivered by hand to the
 14 addressees noted above or on the attachment herein by _____ Legal Services.
- 15 [] **(BY FACSIMILE)** I caused the said document to be transmitted by Facsimile transmission to
 16 the number indicated after the addresses noted above or on the attachment herein.
- 17 [] **(BY OVERNIGHT COURIER)** I caused each such envelope addressed to the parties to be
 18 deposited in a box or other facility regularly maintained by the overnight courier or driver
 19 authorized by the overnight courier to receive documents.

20 I am readily familiar with this law firm's practice for the collection and processing of documents
 21 for regular and certified mailing, overnight mail, and facsimile transaction, and said document(s) are
 22 deposited with the United States Postal Service or overnight courier depository on the same day in the
 23 ordinary course of business.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
 25 true and correct.

26 Executed at San Francisco, California on October 26, 2007



27
28
Kathi de Leon

SERVICE LIST

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5 (831) 423-8383

6
7 Attorney for Defendant CITY OF CAMPBELL

8
9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

10 LEE JACKSON and KENNETH
11 JACKSON,

12 Plaintiffs,

13 vs.

14 SILICON VALLEY ANIMAL CONTROL
15 AUTHORITY, CITY OF SANTA CLARA,
16 CITY OF CAMPBELL, HUMANE
17 SOCIETY OF SILICON VALLEY, and
DOES 1 through 20, inclusive,

Defendants.

Case No.: 1-07-CV-079050

ANSWER OF DEFENDANT CITY OF
CAMPBELL TO PLAINTIFFS' FIRST
AMENDED COMPLAINT

ANSWER

Defendant CITY OF CAMPBELL, answers the unverified complaint of Plaintiff on file
herein as follows:

Pursuant to the provisions of Section 431.30 of the California Code of Civil Procedure,
Defendant denies each and every, all and singular, generally and specifically, the allegations
contained in the complaint.

Defendant further specifically denies that Plaintiffs have been damaged, in any sum, or
otherwise, or at all, by reason of any act or omission of Defendant.

AFFIRMATIVE DEFENSES

1. AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges thereon that said complaint fails to state facts sufficient to constitute a cause of action against Defendant.
 2. AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT, this answering Defendant is informed and believes and alleges thereon the provisions of the California Tort Claims Act of the California Government Code as a measure of the duty of this answering Defendant.
 3. AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges thereon that the complaint, and each cause of action therein, is barred by the following provisions of the California Tort Claims Act: Government Code Section: 815; 815.2; 815.4; 815.6; 816; 818; 818.2; 818.4; 818.6; 818.8; 820; 820.2; 820.25; 820.4; 820.6; 820.8; 820.9; 821; 821.2; 821.4; 821.5; 821.6; 821.8; 822.2; 830.2; 830.4; 830.5; 830.6; 830.8; 830.9; 831; 831.2; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8; 835; 835.2; 835.4; 840; 840.2; 840.4; 840.6; 866 and 867.
 4. AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges thereon that any liability of Defendant is barred by the provisions of California Government Code Sections 815, 815.2, 820.2 and other applicable provisions of law and each of them, in that any injury or damage to Plaintiffs as alleged in said complaint would have resulted from acts or omissions of public employees or Defendant CITY OF CAMPBELL, if at all, in the exercise of discretion vested in them.
 5. AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges thereon that the employees, officials, and agents of Defendant CITY OF CAMPBELL were at all times material hereto acting with both subjective and objective good faith, such that any claim for relief that Plaintiffs may have is barred by law.

- 1 6. AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
2 TO THE COMPLAINT, Defendant is informed and believes and alleges thereon by way
3 of a plea of comparative negligence that Plaintiffs were negligent in and about the matters
4 and activities alleged in said complaint, that said negligence contributed to and was a
5 proximate cause of Plaintiffs' alleged injuries and damages, in any, or was the sole cause
6 thereof, and that if Plaintiffs are entitled to recover damages against Defendant by virtue
7 of said complaint, Defendant prays that the recovery be diminished or extinguished by
8 reason of the negligence of the Plaintiffs in proportion to the degree of fault attributable
9 to the Plaintiffs.
- 10 7. AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE
11 DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges
12 thereon that at the time and place of the alleged injuries, Plaintiffs were not exercising
13 ordinary care, caution, or prudence to prevent injuries and that Plaintiffs' conduct was in
14 direct violation of certain statutes, ordinance, and/or regulations, then and there in full
15 force and effect. Therefore, the alleged injuries or damages were proximately caused by
16 the negligence of Plaintiffs.
- 17 8. AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
18 TO THE COMPLAINT, Defendant is informed and believes and alleges thereon that the
19 fault of persons other than Defendant contributed to and proximately caused the
20 occurrence, and that under the principles formulated in the case of American Motorcycle
21 Association v. Superior Court (1978) 20 Cal. 3d 578, Defendant prays that the percentage
22 of such contribution be established by special verdict or other procedure, and that
23 Defendants' ultimate liability be reduced to the extent of such contribution.
- 24 9. AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
25 TO THE COMPLAINT, Defendant is informed and believes and alleges thereon that at
26 all times mentioned in Plaintiff complaint herein, Plaintiffs acted in a careless, reckless,
27 wanton, and negligent manner in and about the matters set forth in the complaint, that
28 such careless, reckless, wanton, and negligent conduct proximately contributed to the

- 1 injuries and damages, if any, sustained or claimed by Plaintiffs, and that a consequence,
2 Plaintiffs' claim is barred.
- 3 10. AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
4 TO THE COMPLAINT, Defendant is informed and believes and alleges thereon that
5 Plaintiffs failed to exercise reasonable care and diligence to mitigate Plaintiffs' alleged
6 damages.
- 7 11. AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE
8 DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges
9 thereon that Plaintiffs knew and were aware that their conduct presented a substantial risk
10 of causing the injuries alleged in his complaint, and with such knowledge assumed the
11 risk of his injuries.
- 12 12. AS AND FOR A TWELVTH, SEPARATE AND DISTINCT AFFIRMATIVE
13 DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges
14 thereon that the alleged causes of action are barred by the applicable statutes of
15 limitations.
- 16 13. AS AND FOR AN THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
17 DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges
18 thereon that Plaintiff failed to file a complete and timely claim as required by the
19 California Tort Claims Act.
- 20 14. AS AND FOR AN FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
21 DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges
22 thereon Plaintiffs failed to exhaust their available administrative remedies.
- 23 15. AS AND FOR AN FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
24 DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges
25 thereon Plaintiffs failed to exhaust their available judicial remedies.
- 26 16. AS AND FOR AN SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE
27 DEFENSE TO THE COMPLAINT, Defendant is informed and believes and alleges
28

1 thereon that Defendant is immune from an award of punitive or exemplary damages
2 pursuant to California Government Code section 818.

3 WHEREFORE, Defendant prays that Plaintiff take nothing by the complaint filed herein,
4 and that Defendant have judgment for costs of suite herein incurred and for such other and
5 further relief as the Court may deem proper.

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7 Dated: October 23, 2007

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William R. Seligmann,
Attorney for Defendant CITY
OF CAMPBELL

Jackson et. al v. Silicon Valley Animal Control Authority et. al.
Santa Clara County Superior Court Case No. 1-07-CV-079050

Attorney Certificate of Service

I, William R. Seligmann, certify:

I am, and at all times mentioned herein was, an active member of the State Bar of California and not a party to the above-entitled cause. My business address is 333 Church Street, Suite A, Santa Cruz, California 95060.

I served the attached **ANSWER OF DEFENDANT CITY OF CAMPBELL TO PLAINTIFFS' FIRST AMENDED COMPLAINT** on October 23, 2007, by depositing three (3) copies of each of the documents in the United States mail in Campbell, Santa Clara County, California, in a sealed envelope, with postage fully prepaid, addressed to

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Attorney at Law
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Attorney for Plaintiffs

Michael C. Serverian
Rankin, Landsness, Lahde et. al.
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San Jose, California 95112

and

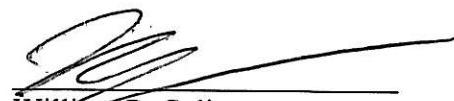
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Attorneys for Silicon Valley Animal Control Authority
and the City of Santa Clara

Joseph C. Costella
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Attorneys for Humane Society of Silicon Valley

who are the parties and/or attorneys of record for the other parties in the above-entitled cause.

Dated: October 23, 2007



William R. Seligmann